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## FISCAL IMPACT REPORT



SPONSOR: Heaton DATE TYPED: 2/2/02 HB 264

SHORT TITLE: Prescription Drug Fair Pricing Act SB \_\_\_\_\_

ANALYST: J. Sandoval

### APPROPRIATION

| Appropriation Contained |        | Estimated Additional Impact |      | Recurring or Non-Rec | Fund Affected |
|-------------------------|--------|-----------------------------|------|----------------------|---------------|
| FY02                    | FY03   | FY02                        | FY03 |                      |               |
|                         | \$50.0 |                             |      | Recurring            | General Fund  |
|                         |        |                             |      |                      |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB226 and relates to HB149, HB200, HJM 21, HJM41, SB91, SB118, SB253, SB263, SJM22, SJM23 and SJM35

### SOURCES OF INFORMATION

LFC files

#### Responses Received From

Health Policy Commission  
Department of Health

#### No Response

Regulation and Licensing Department  
Attorney General

### SUMMARY

House Bill 264 establishes the “Prescription Drug Fair Pricing Act” which prohibits prescription drug price discrimination. A seller offering drugs in a covered transaction must offer the same price during the same period of time to any other purchaser. A “covered transaction” is defined as any sale of a drug to a purchaser doing business in the State, in which a manufacturer, in an arrangement with a wholesaler, negotiates, establishes, determines or otherwise controls terms of conditions of sale. Certain defined entities would be exempt from the statute, most notably federal, state, or local

government programs that purchase drugs directly. Violations of this Act will result in a \$1.0 to \$50.0 fine for each violation.

Synopsis of Bill

House Bill 264 appropriates \$50.0 from the general fund to the Attorney General for the purpose of enforcing the Prescription Drug Fair Pricing Act.

**FISCAL IMPLICATIONS**

The appropriation of \$50.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2003 shall revert to the general fund.

**ADMINISTRATIVE IMPLICATIONS**

None reported.

**DUPLICATION/RELATIONSHIP**

Duplicates SB226.

Relates to HB200 & SB091– Provides prescription drug benefit to New Mexico seniors.

- HJM41 – Requests a study of tax credits to offset prescription drug spending.
- SB253 – Provides for negotiated drug discounts in the Medicaid program.
- SJM23 – Requests the State Agency on Aging to develop a “brown bag assessment” of individuals’ prescription drug bundles.
- HB149 – An appropriation to study a means to use of Native American prescription prerogatives to develop a bulk-purchasing program.
- SB263 – Requires reporting of certain manufacturer drug prices to the Human Services Department.
- HJM21 – Requests the U. S. Congress to enact legislation establishing a single uniform federal “best price” for prescription drugs.
- SJM35 – Requests the Medical Assistance Division to identify all avenues to maximize prescription drug discounts using the Federal 340B program.
- SJM22 – Requests the State Agency on Aging to work with drug manufacturers to simplify the application for manufacturer drug assistance programs, and to conduct a pilot study.
- SB118 - An appropriation to expand prescription drug outreach programs by the State Agency on Aging

**OTHER SUBSTANTIVE ISSUES**

- According to the Health Policy commission, “small retail pharmacies are unable to obtain the same pricing advantage as other large volume drug purchasers in the State of New Mexico. Small retail pharmacies believe this situation puts them at a disadvantage to compete in the retail arena.”
- According to the Health Policy commission, 92% of prescription sales flow through full-line wholesalers or warehouses owned by chain drug stores, buying groups, or other distributors,

so very few sales are made between a manufacturer and an end retailer or hospital. This means that price negotiations between the retail pharmacy and the manufacturer must go through a third party.

- This bill gives smaller pharmacies the opportunity to purchase drugs at the same price manufacturers and wholesalers sell to customers who purchase large volumes of drugs. Overall retail pharmacy prescription prices, particularly in rural areas, smaller cities and at neighborhood pharmacies might be lowered, saving customers extra costs.
- There is a possibility that this legislation could have an opposite impact by increasing the lower price level afforded to high volume pharmacies. This could result in higher total costs for pharmaceutical purchases and would not benefit small pharmacies or the consumer as the legislation is likely intended to do.

### **POSSIBLE QUESTIONS**

1. What is the possibility that this legislation could increase the lower price level afforded to high volume pharmacies?
2. What is the current discrepancy between prices offered to small pharmacies and high volume pharmacies?
3. What options are available for rural communities to purchase affordable medication?
4. What options are available for low-income people to purchase affordable medication?

**JFS/njw**